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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,599	09/24/2003	Stacy J. Driskell	53394.000718	1527
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GOSZ AND PARTNERS, LLP 450 BEDFORD STREET LEXINGTON, MA 02420			EXAMINER KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 01/11/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/668,599

Applicant(s)

DRISKELL ET AL.

Examiner

Michele Kidwell

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 and 53-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28-30 is/are allowed.
- 6) ☒ Claim(s) 1-27, 31-38 and 53-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 111005.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3, 12, 14 – 15, 23, 25 – 26, 31 – 32, 36, 38, 53 – 55, 64 and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Howell (US 5,197,958).

With reference to claim 1, Howell discloses an absorbent article comprising a longitudinal end; a waist portion positioned adjacent the longitudinal end; and a crotch portion adjacent the waist portion (figure 1), wherein the absorbent article includes at least one unregistered character graphic positioned in the waist portion, and at least one wetness indicator graphic positioned in the crotch portion, and wherein the wetness indicator graphic and character graphic are related to one another, but not interactively interrelated as set forth in figure 1.

With reference to claims 2 and 54, Howell discloses an absorbent article further comprising a top sheet; a back sheet; and an absorbent core positioned at least partially between the top sheet and back sheet as set forth in col. 2, lines 35 – 52.

Regarding claims 3 and 55, Howell discloses an absorbent article wherein the at least one wetness indicator graphic is positioned at least partially between the back sheet and the absorbent core as set forth in col. 5, lines 63 – 67.

As to claims 12, 23, 36, and 64 Howell discloses an absorbent article wherein the wetness indicator graphic disappears or fades when insulted with urine as set forth in col. 5, line 67 to col. 6, line 1.

With respect to claims 14, 25, and 66 Howell discloses an absorbent article wherein the article is selected from the group consisting of diapers, training pants, and adult incontinence products as set forth in the abstract.

With respect to claim 15, Howell discloses an absorbent article comprising: a top sheet; a back sheet; an absorbent core positioned at least partially between the top sheet and the back sheet; at least one wetness indicator graphic positioned on the absorbent core facing surface of the back sheet; and at least one unregistered character graphic positioned in a waist portion of the absorbent article, wherein the wetness indicator graphic and character graphic are related to one another, but not interactively interrelated as set forth in the rejections of claims 1 – 2.

Regarding claim 26, see the rejection of claims 1 and 2.

As to claim 31, Howell discloses a wetness indicator graphic printed directly on the back sheet as set forth in col. 5, lines 63 – 67.

With respect to claim 32, see figure 1.

Regarding claim 53, Howell discloses an absorbent article comprising: a longitudinal end; a waist portion positioned adjacent the longitudinal end; a crotch portion adjacent the waist portion; at least one anthropomorphic object graphic positioned in the waist portion; and at least one wetness indicator graphic positioned in the crotch portion, wherein the wetness indicator graphic and anthropomorphic object

graphic are related to one another as set forth in figure 1.

Claims 53 – 58 and 64 – 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Cammarota et al. (US 6,307,119).

With reference to claim 53, Howell Cammarota discloses an absorbent article comprising a longitudinal end, a waist portion adjacent the longitudinal end, a crotch portion adjacent the waist portion and at least one unregistered anthropomorphic object graphic positioned in the waist portion and at least one wetness indicator graphic positioned in the crotch portion, wherein the wetness indicator graphic and unregistered anthropomorphic object graphic are related to one another as set forth in figure 1.

As to claim 54, Cammarota discloses an absorbent article further comprising a top sheet (42); a back sheet (40); and an absorbent core (44) positioned at least partially between the top sheet and back sheet as set forth in col. 14, lines 25 – 30.

With reference to claim 55, Cammarota discloses an absorbent article wherein the at least one wetness indicator graphic is positioned at least partially between the back sheet and the absorbent core as set forth in col. 11, lines 46 – 58.

Regarding claim 56 Cammarota discloses an absorbent article wherein the at least one wetness indicator graphic is positioned on an absorbent core facing surface of the back sheet as set forth in col. 11, lines 46 – 58.

With respect to claim 57 Cammarota discloses an absorbent article further comprising a web disposed at least partially between the absorbent core and the back sheet, and in fluid communication with the absorbent core, the web having printed thereon the at least one wetness indicator graphic as set forth in col. 11, lines 46 – 58.

Regarding claim 58, Cammarota discloses an absorbent article further comprising a web of material positioned in the waist portion, wherein the anthropomorphic object graphic is printed on the web of material as set forth in col. 11, lines 46 – 58 and in the figures.

Regarding claim 64, Cammarota discloses an absorbent article wherein the wetness indicator graphic disappears or fades when insulted with urine as set forth in col. 1, lines 45 – 54.

As to claim 65, Cammarota discloses an absorbent article wherein the wetness indicator graphic disappears or fades over a period of time when exposed to the air as set forth in col. 1, lines 45 – 54.

With reference to claim 66, Cammarota discloses an absorbent article wherein the article is selected from the group consisting of diapers, training pants, and adult incontinence products as set forth in the figures.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 – 11, 13, 16 – 22, 24, 27, 33 – 35, 37, 45 – 49 and 56 – 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howell (US 5,197,958) in view of Cammarota et al. (US 6,307,119).

The difference between Howell and claim 4 is the provision that the at least one wetness indicator graphic is positioned on an absorbent core facing surface of the back sheet.

Cammarota teaches a wetness indicator graphic being positioned on an absorbent core facing surface of the backsheet as set forth in col. 11, line 66 to col. 12, line 3.

It would have been obvious to one of ordinary skill in the art to provide a wetness indicator graphic on an absorbent core facing surface of the backsheet because this location is particularly desirable for wetness indicator graphics in order to enhance the speed at which the graphic is contacted by urine and thus change their visual appearance as taught by Cammarota in col. 11, line 66 to col. 12, line 3.

As to claims 5,16 and 57, Cammarota teaches an absorbent article further comprising a web disposed at least partially between the absorbent core and the back sheet, and in fluid communication with the absorbent core, the web having printed thereon the at least one wetness indicator graphic as set forth in col. 11, lines 40 – 58.

With reference to claims 6 and 17, Cammarota teaches the use of a web of material in col. 11, lines 46 – 52. Howell discloses the unregistered character graphic positioned in the waist portion as shown in figure 1.

As to claims 7, 18, 45 and 59, Howell discloses a repeating series of character graphics as set forth in figure 1.

Regarding claims 8, 19 and 46 Howell discloses an absorbent article wherein the character graphic is selected from the group consisting of an animal, a cartoon character, and an anthropomorphic object as set forth in figure 1.

With respect to the claimed wetness indicator graphic, the examiner contends that absent a critical teaching and/or unexpected result, the claimed limitation is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

Regarding claims 9 – 11, 20 – 22, 33 – 35, 47 – 49 and 60 – 63, the examiner contends that absent a critical teaching and/or unexpected result, the claimed limitation is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

As to claims 13, 24 and 37 Cammarota teaches an absorbent article wherein the wetness indicator graphic disappears or fades over a period of time when exposed to air as set forth in col. 1, lines 48 – 54.

With reference to claims 27 and 56, see the rejection of claim 4.

Regarding claim 58, see the rejection of claims 6 and 17.

Allowable Subject Matter

Claims 28 – 30 are allowed.

Response to Arguments

Applicant's arguments filed October 14, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an unregistered character graphic that does not change when the diaper becomes wet) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the applicant's statement that Cammarota fails to disclose an unregistered graphic, the examiner disagrees. Cammarota provides no precise positioning of the graphic on the garment, thereby meeting the applicant's definition of an "unregistered" graphic.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Howell is directed to a diaper comprising wetness indicator graphics that can be easily detected from most viewing angles of the diaper (abstract). Likewise, Cammarota provides a

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diaper that uses wetness indicators as interactive training aids (abstract). As both inventions are directed to the use of wetness indicators to train the user and warn the caregiver, the modification of where to place the wetness indicator for the most effectiveness can be reasonably suggested or motivated by both references as taught in the abstract of both references and in Cammarota, col. 11, line 66 to col. 12, line 3.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Primary Examiner
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